

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE GAMBLING CONTROL BOARD

In the Matter of the  
Gambling Manager's  
License of Paul Gabriel,  
License Number 01031

**ORDER ON MOTION FOR  
SUMMARY DISPOSITION**

The above-entitled matter came before Administrative Law Judge Barbara L. Neilson on the Minnesota Gambling Control Board's motion for Summary Disposition. The Board filed its motion on February 24, 2003. The Licensee filed his response to the motion on February 28, 2003. Oral argument on the motion was heard on April 22, 2003, at the Office of Administrative Hearings and the OAH record closed for purposes of this motion on that date.

E. Joseph Newton, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2122, represented the Minnesota Gambling Control Board. Larry B. Stevens, Attorney at Law, Roseville Professional Center, 2233 North Hamline Avenue, Suite 412, Roseville, MN 55113, represented the Respondent, Paul Gabriel.

Based upon the file, record, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

1. The Gambling Control Board's motion for summary disposition is GRANTED as to Count I.
2. The Gambling Control Board's motion for summary disposition is DENIED as to Count II.
3. A telephone conference call will be held on Tuesday, May 27, 2003, at 2:30 p.m. to set a date for the hearing in this matter. The Administrative Law Judge will initiate the conference call.

Dated: May 20, 2003.

/s/ Barbara L. Neilson  
\_\_\_\_\_  
BARBARA L. NEILSON  
Administrative Law Judge

**MEMORANDUM**

The Minnesota Gambling Control Board has initiated this contested case proceeding to seek disciplinary action against the gambling manager's license of the Respondent, Paul Gabriel. Respondent has been employed as the gambling manager for American Legion Post 507 in Willernie, Minnesota since 1988. All organizations conducting gambling are required to have a licensed gambling manager.<sup>1</sup> By statute, a gambling manager is required to be an "active member" of the organization for at least two years.<sup>2</sup> Board rules prohibit renewing the license of a gambling manager who is not an active member of the organization.<sup>3</sup> The Board argues that Respondent does not qualify to act as gambling manager because, having never served in any branch of the United States military, Respondent is precluded from being a member of the American Legion. Because Respondent is precluded from being a member of American Legion Post 507, the Board contends that he cannot act as its gambling manager.

The Board alleges in Count I of the Notice of and Order for Hearing that Respondent violated Minn. Stat. § 349.167, subd. 2, by not qualifying for a gambling manager's license (Count I). In particular, the Board contends that Respondent is precluded from being a member of the Post due to his lack of military service, and that he thus is not qualified to act as the Post's gambling manager. The Board also alleges in Count II that Respondent violated Minn. Stat. § 349.155, subd. 4(2), by falsely claiming to be a member of American Legion Post 507 in applications to the Board. The Board asserts that there are no issues of material fact in this matter and that the Board is entitled to summary disposition on both counts as a matter of law.

Respondent argues that, at the time of his original licensing in 1988, he had been an active member of the Sons of the American Legion Post 507, Willernie ("Sons") for five years. The Sons is an auxiliary organization that is, according to Respondent, "an integral unit" of American Legion Post 507. Respondent maintains that, prior to the time he was licensed as gambling manager, officers of American Legion Post 507 discussed his membership status with Board staff, including the Board's then-president, Roger Franke.<sup>4</sup> In affidavits submitted on Respondent's behalf, former Post 507 officers assert that they met with Board staff in 1986 and specifically disclosed to them that Respondent was a member of the Sons organization but not the American Legion itself. These former Post 507 officers maintain that Board staff reviewed the situation and determined that Respondent's long-standing membership in the Sons of the American Legion qualified as membership within the organization itself for purposes of being a licensed gambling manager. Based on the Board's advice, American Legion Post 507 retained Respondent as their assistant gambling manager for two years and hired him as the gambling manager in 1988.

When Respondent was licensed in 1988, an "active member" was defined as "a member who has paid all his dues to the organization and has been a member of the

---

1 Minn. Stat. § 349.16, subd. 2(f).

2 Minn. Stat. § 349.12, subd. 19.

3 Minn. Rule 7861.0030, subp. 2B.

4 Affidavits of Russel Hill and Gary Dawson, Exs. A and B to Respondent's memo.

organization for at least six (6) months.”<sup>5</sup> This definition was amended in 1989 to include additional restrictions regarding age, voting rights, the opportunity to be elected officer, and attendance. According to Respondent, Board staff advised Post 507 officers to amend the Post’s by-laws to make Respondent a member of the Executive Committee and to allow him to vote on general membership matters in order that Respondent would meet the new statutory criteria. Respondent contends that Post 507 did amend its by-laws so that, since 1989, he has been a member of the Executive Board of Directors and has had voting rights.

Respondent argues that it is the local American Legion Post, and not the National American Legion, that establishes membership eligibility. According to Respondent, Post 507 has determined that his membership in the Sons of American Legion Post 507 qualifies him for membership in the organization itself. Respondent contends that this determination was formalized by the members of Post 507 on January 8, 2003, when they approved a resolution proclaiming Respondent to be an “honorary member” of American Legion Post 507. Respondent insists that there are different types of members of American Legion posts including auxiliary, social, honorary and general. Respondent maintains that he has been a defacto or honorary member since at least 1988 and as such he should qualify as an “active member” under the statute.

### **Scope and Standard of Review**

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.<sup>6</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>7</sup>

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>8</sup> To successfully resist a motion for summary judgment, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.<sup>9</sup> A nonmoving party cannot rely on pleadings alone to defeat a summary judgment motion.<sup>10</sup> The nonmoving party must establish the existence of a genuine issue of

---

<sup>5</sup> Minn. Stat. § 349.12, subd. 2 (1988).

<sup>6</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1995); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. Rules, 1400.5500K; Minn.R.Civ.P. 56.03.

<sup>7</sup> See Minn. Rules 1400.6600 (2002).

<sup>8</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

<sup>9</sup> *Thiele v. Stitch*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>10</sup> *White v. Minnesota Dept. of Natural Resources*, 567 N.W.2d 724 (Minn. App. 1997).

material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.<sup>11</sup>

When considering a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party,<sup>12</sup> and all doubts and factual inferences must be resolved against the moving party.<sup>13</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>14</sup>

### **Count I – Failure to Qualify for Gambling Manager License**

Minn. Stat. § 349.12, subd. 19, defines “gambling manager” as “a person who has been designated by the organization to supervise the lawful gambling conducted by it and who (1) has been an *active member* of the organization for at least two years; or (2) who meets other qualifications defined by Board rule.”<sup>15</sup> There are no alternative qualifications defined by Board rule. Instead, Minnesota Rule 7861.0030, subp. 2B, mirrors the statute by prohibiting the Board from renewing the license of a gambling manager who is not an active member of the organization.

An “active member” is defined in Minn. Stat. § 349.12, subd. 2, as:

a member who has paid all dues to the organization, who is 18 years of age or older, who has equal voting rights with all other members, who has equal opportunity to be elected officer, who has equal right and responsibilities of attendance at the regularly scheduled meetings of the organization, whose name and membership origination appear with the member's knowledge and consent on a list of members of the organization, and who has been a member of the organization for at least six months.

Respondent meets most of the criteria listed in the definition of “active member.” That is, he is over 18 years old and, since 1986, he has participated in monthly Executive Board and General Membership meetings, paid dues to the organization, and has had voting rights in both Executive Board and General Membership matters.<sup>16</sup> Respondent has also met the training and examination requirements imposed under Minn. Stat. § 349.167. And there is no allegation that Respondent failed to fulfill the duties of his position or that he engaged in any criminal or improper conduct while serving as gambling manager for Post 507 during the past 15 years.

However, local American Legion posts are organized under the National Constitution of the American Legion, which limits membership of its charter posts to

---

11 *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

12 *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

13 See, e.g., *Celotex*, 477 U.S. at 325; *Thompson v. Campbell*, 845 F.Supp. 665, 672 (D.Minn. 1994); *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971).

14 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986).

15 Emphasis added.

16 Exhibit C, Resolution 2003-01, attached to Respondent's memorandum.

veterans of United States military service.<sup>17</sup> Respondent admits that he has never served in the United States military. Although it is the local American Legion post and not the national organization that is licensed by the Board, each local post must obtain a charter from the national organization and abide by its constitution. According to Article IV, section 1 of the National Constitution of the American Legion, any person shall be eligible for membership in the American Legion who was “a member of the Army, Navy, Marine Corp, Coast Guard, or Air Force of the United States and assigned active duty” during periods of hostilities as determined by the United States government.<sup>18</sup> Moreover, Article IV, section 2 provides that “[t]here shall be no form or class of membership except an active membership, and dues shall be paid annually for life.”<sup>19</sup> Respondent has not provided any evidence that Post 507 defines its membership criteria in a fashion that differs from the national organization.

The resolution of American Legion Post 507 extending honorary membership to Respondent on January 8, 2003, does not change the membership eligibility criteria spelled out in the Legion’s constitution, nor does it obviate the requirement in the constitution that there be no form or class of membership other than an active membership. In fact, a letter from the American Legion Department of Minnesota, which Respondent submitted, corroborates the Board’s position regarding membership eligibility in Minnesota American Legion posts.<sup>20</sup> According to the letter, the American Legion Department of Minnesota has endorsed establishing criteria that will allow “individuals other than organization members to become gambling managers in American Legion Posts in Minnesota. This includes allowing family members of organizational members to become gambling managers or allowing members of the Auxiliary to become gambling managers.” Until such new criteria is adopted and the statutory definition of “gambling manager” is expanded to allow members of auxiliary groups or relatives of American Legion members to qualify, Respondent’s participation in the Sons of the American Legion and his designation as an “honorary member” of the Post is not enough to qualify him to be Post 507’s gambling manager.

Despite what appears to be an unblemished and even exemplary record of service by Respondent as American Legion Post 507’s gambling manager, the Administrative Law Judge unfortunately is compelled to conclude that there are no issues of material fact with respect to the allegation contained in Count I. The statute requires that the gambling manager of an organization licensed to conduct lawful gambling be an active member of that organization. Respondent is prohibited from being a member of the American Legion due to his lack of military service. Consequently, Respondent does not meet the statutory requirement to act as gambling manager for American Legion Post 507, Willernie.

---

17 See Affidavit of Lyle Foltz, Ex. A, attached to Board’s memorandum. The American Legion is a national civilian organization and local posts are organized under each state’s American Legion department.

18 Id.

19 Id.

20 Respondent’s Memorandum, Ex. D.

## **Count II – Submitting a False Application to the Board**

Minn. Stat. § 349.155, subd. 4(2), permits the Board to revoke or refuse to renew the license of a licensee or applicant who has filed a license application that is incomplete or contains a statement that is false, misleading, fraudulent, or a misrepresentation. The Board argues that Respondent falsified applications to the Board by representing that he was a member of the American Legion.

The Administrative Law Judge finds that there are genuine issues of material fact that preclude granting summary disposition on this claim. Respondent has submitted credible evidence that Post 507 officers specifically disclosed Respondent's membership status to the Board prior to appointing him gambling manager in order to ensure full statutory compliance. According to Respondent, the Board determined that his membership in the Sons of the American Legion was sufficient to qualify as "active membership" in the American Legion itself. Respondent maintains that it is only due to the Board's interpretation of the governing statutes and its assurance that he was in compliance, that he represented on each renewal application that he was a member of the American Legion. The Judge finds that the alleged representations made by Board staff to Post 507 officers in 1986 raises a material fact issue as to whether Respondent falsified his license applications or misrepresented his membership status. Viewing the facts in the light most favorable to Respondent, the Administrative Law Judge concludes that the Board's motion for summary disposition on Count II must be denied. As noted above, this matter will be is set on for a prehearing telephone conference call to schedule a hearing on this remaining allegation.

B.L.N.